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1 and 11 of 1984 was to determine if abuse really had
2 occurred; is that correct?

3 A No.

4 Q So your testimony that determining whether or not Katie
5 Spencer had been abused was not anything you were trying to
6 determine when you met with Katie Spencer on December 10
7 and December 11 of 1984?

8 A I am saying that, yes.

9 Q Okay.

10 A That had already been determined by the investigators. My
11 job was to find out if she was competent and could testify.

12 Q If Katie Spencer had told a consistent story to you on
13 December 11 of 1984 that you believe established that Ray
14 Spencer had abused her sexually, is it -- and you had
15 videotaped that interview, you would have used that video
16 as evidence of probable cause; is that correct?

17 A No, the video wasn't evidence of anything. It was the
18 child's statement. Whether there was a video or not would
19 have been irrelevant. Prior statements that she made to
20 Sharon and Shirley and Ann Link were not videoed, but they
21 were evidence of probable cause.

22 Q So you would not have used a videotape reflecting Katie
23 Spencer telling a consistent, believable story about sexual
24 abuse as evidence of probable cause in further proceedings
25 regarding Ray Spencer; is that correct?

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1 A What further proceedings are you referring to?

2 Q A criminal prosecution.

3 A I think you're mixing things, Counsel. The determination
4 of probable cause was a decision in the state of Washington
5 that the prosecutor makes. It's not as if there's a
6 hearing before a magistrate where -- like we have in
7 federal court where the magistrate makes that decision. So
8 the video wouldn't have been evidence. It would have
9 been -- it would have been proof that she said those
10 things. It would have been -- but the fact was the
11 evidence would be what she said. And that would simply
12 have been conveyed to Mr. Curtis, and he would have made
13 the decision, whatever decision he chose to make.

14 Q Would you have turned that video over to the defense?

15 A Of course. Before trial it definitely would have been
16 turned over.

17 Q If Katie Spencer was able to tell her story without
18 contradictions on the videotape when you interviewed her on
19 December 11 of 1984, that would have been relevant to
20 whether or not there was probable cause for the arrest of
21 Ray Spencer, correct?

22 A Of course.

23 MS. FETTERLY: Object to form. When you say
24 probable cause, for arrest or prosecution? They're two
25 separate concepts.

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1 A I missed that, Counsel.

2 Q (By Mr. Johnson) I'm aware.

3 MS. FETTERLY: Then you better clarify which one
4 you mean.

5 A Which are you referring to?

6 Q (By Mr. Johnson) Well, if Katie Spencer was able to tell
7 her story consistently without contradiction on videotape
8 when you interviewed her on December 11, 1984, would that
9 have been relevant to probable cause for the arrest of Ray
10 Spencer?

11 A Well, Katie's interview, whether she was consistent or not
12 consistent, was relevant to probable cause to charge.

13 Q Katie couldn't keep her story straight when you interviewed
14 her on December 11, 1984, could she?

15 A It depends on what you mean by keep her story straight.
16 She was -- she was --

17 Q Well, you just saw the video. Could she?

18 A I did. She was a difficult witness, but I don't know if
19 you've had the experience of talking to five-year-olds
20 about sex. It's a very difficult thing for both the
21 interviewer and the child being interviewed, and they're
22 frequently all over the place.

23 Q In your -- I'm just talking about Katie Spencer. She
24 denied to you on more than one occasion that anything
25 improper had happened with her and Ray, correct?

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1 A I don't believe she ever said that.

2 Q You don't believe that she ever denied anything bad
3 happening between Ray and her?

4 A Well, your question was she denied to you multiple times
5 that anything improper had happened between her and Ray,
6 and I don't recall her -- I don't recall that happening.

7 Q All right. If that had happened, that would suggest that,
8 at least to some extent, that nothing bad had happened with
9 Ray, correct?

10 A You used a pronoun if "that" had happened. I'm not sure
11 what you're saying.

12 Q Okay. If Katie had denied to you more than once that Ray
13 had sexually abused her, that would suggest, at least to
14 some extent, that Ray had not sexually abused her, correct?

15 A You have to look at the totality of the interview and the
16 totality of the facts to weigh whether or not you have --
17 you believe there's some credibility to the story.
18 Children --

19 Q So, in your opinion -- in your opinion, her denying it
20 really didn't mean anything?

21 MS. FETTERLY: Object to the form.

22 A You're assuming that she denied something. And, again,
23 you're using pronouns, which are not clear as to what the
24 reference is.

25 Q (By Mr. Johnson) All right. If she denied -- would there

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1 it? That's a leading question. There are directed
2 questions; there are questions that give choices; and there
3 are open-ended questions, and probably others that I'm not
4 thinking of right now.

5 Q Okay. In getting a credible story from a child, would you
6 agree that the child's story is more likely to be true if
7 you use open narrative questions?

8 A Yes. That's often -- that is the preferred method, to
9 begin an interview --

10 Q All right.

11 A -- and I believe I did begin it that way.

12 Q But the great majority of your questioning is not what we
13 would call open narrative, is it?

14 A That wasn't very successful, so I used other types of
15 questions.

16 Q What other types of questions?

17 A I gave her lots of choices. I mean, you'd have to refer to
18 the tape or the transcript. I don't have immediate recall.

19 Q Okay. We'll get there, but would you agree with me that a
20 great majority of the talking on the tape is by you and not
21 Katie?

22 A Talking? There was plenty of communication going on. Most
23 of -- many of her responses were nonverbal, but clear. You
24 could see what the answer was, yes or no. So the --

25 Q But with regard -- I'm just asking about you about the

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1 talking, not anything else. Is the great majority of the
2 talking on the tape your talking and not hers?

3 A Most of the words, yes, that's true.

4 Q All right. Did the videotape establish probable cause for
5 the arrest of Ray Spencer?

6 A The probable cause was based upon the investigation. And
7 the videotape was very similar to the rest of the
8 investigation, but it didn't -- it didn't rebut probable
9 cause. She abided by her claims, she demonstrated overt
10 sexual acts consistent with what she had previously relayed
11 to the investigators and the therapist, and left the case,
12 in my opinion, in about the same place that it was when I
13 got it, and that was it was a very problematic case, that,
14 as I said, was in about the same place as when I started
15 the interview.

16 Q Was probable cause established -- for the arrest of Ray
17 Spencer established prior to December 10 of '84?

18 MS. FETTERLY: Again, clarify. Are you saying
19 probable cause to arrest or probable cause to charge?
20 You're continually mixing those terms up.

21 MR. JOHNSON: Would you read that question back.

22 THE COURT REPORTER: Question: "Was probable
23 cause established -- for the arrest of Ray Spencer
24 established prior to December 10 of '84?"

25 MR. JOHNSON: Do you want to withdraw that

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1 objection?

2 MS. FETTERLY: But you're continually mixing
3 them. I want the witness to be clear what you're asking
4 him.

5 MR. JOHNSON: You need her to with read it back
6 for you to withdraw the objection? See, when I used the
7 term "arrest," I meant arrest.

8 MS. FETTERLY: Okay.

9 A I can answer the question.

10 Q (By Mr. Johnson) I figured.

11 A Mr. Spencer was not arrested. He made a voluntary
12 appearance. There was probable cause to charge him, but
13 when he made his -- when he was first charged by Mr. Curtis
14 on January 3rd, he made a voluntary appearance. He wasn't
15 arrested, so I think that's the concern.

16 Q Was there probable cause to arrest Ray Spencer prior to
17 December 10 of 1984?

18 A There was probable cause to charge, and I guess if someone
19 had sought an arrest warrant, that's a decision for a judge
20 to make, but Mr. Curtis made the decision there was
21 probable cause to charge him. And --

22 Q All right. And I'm asking you whether or not there was
23 probable cause to arrest Ray Spencer prior to December 10
24 of 1984?

25 MS. FETTERLY: Same objection. I think the

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1 witness has clarified that prosecutors don't arrest. I
2 mean, what -- I mean, what -- same objection.

3 MR. JOHNSON: I'm not asking what prosecutors do
4 or what they don't do. I'm asking him was there probable
5 cause to arrest, and maybe he doesn't have an opinion.

6 Q (By Mr. Johnson) Yes, no, I don't know? Was there
7 probable cause to arrest Ray Spencer prior to December 10
8 of 1984, if you have an opinion?

9 A I believe there was probable cause, yes.

10 Q To arrest?

11 A Arrest, charge; it's the same standard, Counsel. Just a
12 judge gets -- a judge gets involved in the decision to
13 arrest.

14 Q Do you want to meet with your counsel and describe to her
15 what you just said because I've been hearing the
16 contradictory thing for last ten minutes?

17 A One goes to -- in Washington State, the prosecuting
18 attorney makes the decision to charge. If you're going to
19 get an arrest warrant, you have to go to a judge and get
20 the warrant.

21 MS. FETTERLY: And that was the purpose of my
22 objection.

23 Q (By Mr. Johnson) I'm not asking you about any of that, and
24 I think you've answered the question.

25 You would have disclosed the tape if it was relevant

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1 to probable cause to arrest, wouldn't you have?

2 A Counsel, if I had been the lead prosecutor in the case from
3 the get-go, the tape would have been disclosed from the
4 get-go. I was not the lead prosecutor in the case from the
5 time it was charged until probably the second or third week
6 of April 1985.

7 Q Who was that?

8 A Barb Linde.

9 Q Barb Linde was the lead prosecutor in the case in the time
10 period you just described; is that correct?

11 A She was.

12 Q Is there any documentation that reflects that?

13 A Yes, there is.

14 Q What is that?

15 A There are three letters from Art Curtis dated January 9,
16 1985. One is to Norm Maleng, the King County prosecutor,
17 thanking him for assigning a deputy prosecuting attorney,
18 outside counsel, to prosecute Mr. Spencer.

19 The second letter is to Rebecca Roe forwarding the
20 reports to her and similarly thanking King County for
21 agreeing to take over the case. And the third letter is to
22 Leland Davis, the Chief of Police of Vancouver, similarly
23 saying that the case had been referred to outside counsel,
24 and at the end of the letter asking him to relay that to
25 his officers. Because of the sensitive nature of the case,

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1 it had been referred to outside counsel. There's
2 additional documentation of that if you'd like me to
3 clarify.

4 Q Sure.

5 A In my review of the prosecutor's file, which I've done in
6 the last couple of months, I encountered a note. It was a
7 While-You-Were-Out note that was written by a receptionist
8 on April 4, 1985, documenting a call from Barb Linde to Art
9 Curtis requesting a call back. I also noted a -- one of
10 those small-sized yellow pads, the five-by-seven yellow
11 pads, a copy of that -- it wasn't yellow; it was a copy --
12 in Art Curtis' handwriting of notes that he took, and I
13 recognized Mr. Curtis' handwriting because I worked with
14 him first in the public defender's office for a year and
15 then more than ten years in the prosecutor's office,
16 documenting his call back to Barb Linde on April 4th, 1985.

17 And, by the way, I was in Hawaii at that time. I
18 wasn't even in the office, where Barb Linde informed
19 Mr. Curtis that she had an aggravated murder trial
20 scheduled for the last week of May and the first week of
21 June of 1985.

22 Additional documentation is -- are letters dated, as
23 I recall it, May 9. They wouldn't have been written on
24 May 9 because I was in Sacramento with Jim Rulli, but they
25 would have been dictated. We didn't have computers back

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1 then. They were dictated and things got typed, so they
2 were sometimes dated not on the date it was dictated. A
3 letter from me to Barb Linde, referring to -- thanking her
4 for her participation as outside counsel, and referring to
5 a telephone conversation she and I had several weeks
6 before, two weeks before, I think it says, where we had
7 talked about me taking the case over from her because of
8 her conflict and the fact that there were -- the case was
9 in a different posture now and having two new victims from
10 when I had initially seen it back in December.

11 Q Where is Barb Linde now?

12 A She's a Superior Court judge in Seattle.

13 Q Do you see her on occasion?

14 A I've never seen her. I haven't seen her since -- I may
15 have seen her at a prosecutors' conference back when I was
16 a state prosecutor, but I barely knew her.

17 Q So she's not a social friend?

18 A No.

19 Q Okay, let me take you to December 10 of 1984. On that day,
20 and this is the date before the video, did you learn
21 anything from your interaction with Katie Spencer that was
22 relevant in the case?

23 A I don't recall that at all, and the only reason I even know
24 it happened, even know that I talked to her on the 10th,
25 was from -- I think I may have mentioned it in a prior

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1 weren't there?

2 A I assume they were.

3 Q And they were available in Washington?

4 A I assume so.

5 Q And you certainly could have purchased one or had your
6 office purchase one and you could have conducted this
7 interview at the Clark County prosecutor's office; is that
8 correct?

9 A That was three questions, Counsel. I certainly could have
10 purchased one myself. I didn't. I hadn't.

11 Whether the Clark County prosecutor's office
12 purchased one wasn't my decision. I wasn't a management
13 person. I had nothing to do with the budget.

14 And I forgot your third question.

15 Q Okay. I'll just ask you one question. This could have
16 been done in the Cook County prosecutor's office, correct?

17 A Probably not.

18 Q I'm sorry.

19 A It was 2500 miles away.

20 Q Okay. This could have been -- this interview of Katie
21 Spencer could have been done in the Clark County
22 prosecutor's office; is that correct?

23 A Well, first of all, we didn't have the equipment, although
24 I suppose some could have been brought in. So physically
25 could it have been done? Yes.

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1 Q All right.

2 A Not with equipment that was available there, though.

3 Q Okay. Had you ever been involved in a case where an
4 alleged child sex abuse victim had been videotaped at the
5 Clark County Sheriff's office?

6 A No, I don't think so.

7 Q After this, had you ever -- did you ever do it again?

8 A Did I ever do it again?

9 Q Yes.

10 MS. FETTERLY: Are you suggesting in that
11 question that this witness videotaped another child
12 witness, or are you suggesting that Clark County Sheriff's
13 office did? Your question is unclear.

14 Q (By Mr. Johnson) Okay. Were you ever involved in an
15 interview of a child sex abuse victim at the Clark County
16 Sheriff's office after this interview with Katie Spencer?

17 A Oh, I have no idea. I don't recall.

18 Q Do you recall --

19 A I can tell you -- I can tell you I never ever did an
20 investigative interview with a child, meaning an initial
21 interview, a fact-finding interview. I've never done one
22 of those with any witness.

23 Q I'm talking about -- we both know there's an interpretation
24 difference of opinion, but what I'm asking you about is the
25 videotaping of a child sex abuse victim.

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1 Were you, Mr. Peters -- I'm talking about you -- ever
2 again after December 11, 1984, involved in interviewing a
3 child witness at the Clark County state -- Sheriff's
4 office --

5 A No.

6 Q -- with regard to sex abuse allegations?

7 A No. Videotaping an interview of the child? Is that what
8 your question was?

9 Q Yes.

10 A No.

11 Q Yes. All right. So this one stuck out in your mind; is
12 that correct?

13 A Which one stuck out of in my mind?

14 Q This videoed interview of Katie Spencer. It's the only one
15 you ever did over there, right?

16 A The fact of the video interview stuck out in my mind, yes.
17 The fact of the interview.

18 Q You wouldn't -- okay.

19 You never caused this videotape to be disclosed to
20 anyone, did you?

21 A I believe Mr. Curtis knew about it and certainly Sharon
22 Krause knew about it.

23 Q Did you cause it to be disclosed to Art Curtis?

24 A I just testified that I believe Art Curtis knew about it.
25 What do you mean by "cause it to be disclosed"? Maybe

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1 we're playing word games. What do you mean by that?

2 Q Did you give him the tape?

3 A I didn't have a copy of the tape. The tape remained in
4 Sharon Krause's office -- or in the Sheriff's office.

5 Q We'll come back to that, but I'm asking you if you gave Art
6 Curtis a copy of the tape or the original of the tape.

7 A No, I never had a copy of the tape.

8 Q Did you give Sharon Krause the tape?

9 A No.

10 Q All right. So did you cause the tape to be disclosed to
11 anyone other than what you've said about Art Curtis and
12 Sharon Krause?

13 A Me personally?

14 Q Yes.

15 A Cause it to be disclosed?

16 Q Yes.

17 A No. No.

18 Q Okay.

19 A I mean, there was another --

20 Q Did you ever tell anyone about --

21 A There was another Sheriff's deputy there.

22 Q And who was that?

23 A His name was Jeff.

24 Q Jeff. Okay. He was -- what's Jeff's last name?

25 A I don't remember.

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1 answer.

2 A I don't -- I don't recall that I did.

3 Q (By Mr. Johnson) And it's fair to say that you absolutely
4 did not, correct?

5 A Yes.

6 Q I want you to assume that on December 11 of 1984 you were
7 able to establish in your mind, meaning you were able to
8 arrive at the opinion that Katie Spencer was clearly lying
9 about Ray's sexually molesting her when you met with Katie.
10 Is it fair to say that if you had concluded that, you would
11 not have recommended charging Ray?

12 A I -- I -- yes. But the question assumes I did recommend
13 charging Ray, and that's a false assumption.

14 Q Oh, you did not recommend charging Ray --

15 A I did not.

16 Q -- with --

17 A I did not.

18 Q Did you have any input in to the charging decision?

19 A Yes, we had a conversation about it. Yes, I did have
20 input.

21 Q And is that on January 3rd of 1984 [sic]?

22 A Second or 3rd.

23 Q All right. At that time did you tell -- strike that. What
24 was your input?

25 A I remember the meeting. I believe that Sharon was there

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1 and Art was there, and I told him that based on my
2 interview with Katie that I believed she was probably
3 competent, but that she was a very difficult witness and
4 would have a difficult time testifying, but she probably
5 could qualify as a witness.

6 Q And what else did you -- was your input?

7 A Well, that she -- that she indicated that she had been
8 molested by her father and that the most prominent one that
9 I recalled was that she remembered oral sex, which -- with
10 a man, with a man's penis, which clearly distinguished what
11 she experienced from the concerns that there may have been
12 female perpetrators and that she had also indicated some
13 sexual contact both while she was laying down facing up and
14 when she was lying down facing down with her father.
15 That's what I recall.

16 Q You remember saying all that?

17 A No.

18 Q You remember saying all that?

19 A No, I don't remember saying all that. I remember conveying
20 to Mr. Curtis what I had seen.

21 Q Did you make a recommendation on January 2nd or 3rd, 1984,
22 [sic] to Art Curtis as to whether or not Ray Spencer should
23 be charged with sexually related crimes against Katie?

24 A Yeah, I told him I wouldn't charge it and I didn't want my
25 name on the charging document.

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1 Q Did you tell Art Curtis about the videotaped interview with
2 Katie?

3 A Yes.

4 MS. FETTERLY: Asked and answered.

5 Q (By Mr. Johnson) In that meeting did you tell him that?

6 A I don't recall.

7 Q Did he ask you for the videotape?

8 A I don't recall. I didn't have it anyway, but I don't
9 recall.

10 Q Did --

11 A I think I may have said --

12 Q Would you have obtained it?

13 A I think I may have said, "You can go down and look at it if
14 you want to."

15 Q Did he need your permission?

16 A No, I'm telling him that's where it is, in the Sheriff's
17 office. He didn't need my permission.

18 Q You knew where it was on January 2nd or 3rd of 1984 [sic];
19 is that correct?

20 A In the Sheriff's office, yes.

21 Q Where is the Sheriff's office?

22 A I had no idea. When I -- Jeff had it. And what he did
23 with it, I don't know.

24 Q How do you know Jeff had it?

25 A It was in the camera. Jeff had access or had control of

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1 the camera.

2 Q You're assuming that?

3 A Well, it was -- he set it up. He controlled it while --
4 during the first part of the interview, and I'm confident
5 he came and picked it up when we were done with the second
6 part of the interview.

7 Q Did you observe him come pick it up?

8 A I don't recall.

9 Q You did not observe him come pick it up, correct?

10 A I don't recall, Counsel. You can draw --

11 Q Again, if you were to assume --

12 A I'm drawing inferences from obvious facts. He brought it
13 in, he set it up, he turned it on. We finished the
14 interview. I left. I -- you know, you could draw
15 reasonable inferences from those facts.

16 Q So you left the room with the videotape still in the
17 camera?

18 A Well, the room was Sharon Krause's office.

19 Q Okay. Did you do it in a cubicle?

20 A Well, I don't know if -- at one point she had a cubicle.
21 At one point she had an office. I don't recall which at
22 that point, because she changed.

23 Q Will you give it to me again? You left that room and a
24 videotape that you had played a role in creating of a minor
25 child being questioned about sexual abuse of her father

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1 without the camera man present and proceeded on your way;
2 is that correct?

3 A I don't recall. I'm sure the custody of the --

4 Q Did you take any steps --

5 A I'm sure the custody of the tape was taken over by somebody
6 in the Sheriff's office.

7 Q And can you name the person in the Sheriff's office that
8 you are sure took custody of the tape?

9 A No, I can't recall.

10 Q And you did not observe anyone in the Sheriff's office
11 taking custody of that tape, correct?

12 A I don't recall.

13 Q That means you don't know one way or the other, right?

14 A I don't know one way or the other. It was 28 years ago.

15 MS. FETTERLY: Do you need a break?

16 THE WITNESS: No.

17 Q (By Mr. Johnson) All right. Did you write anything on
18 that -- let's go back to the beginning in that videotape.
19 Did you write anything on the tape?

20 A I don't recall having done so.

21 Q Well, you would assume, wouldn't you, that the tape was
22 labeled?

23 A I -- you're -- now you're asking me to assume. I don't
24 recall. The tape didn't belong to me. The tape was the
25 property of the Sheriff's office and it remained with the

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1 Sheriff's office.

2 Q You don't know that, though, right? Right?

3 A Well, I do know that.

4 Q Oh, you do. Okay. So when did it remain with the
5 Sheriff's office?

6 A Common sense, Counsel, it was created in the Sheriff's
7 office. It ended up with Sharon Krause. Therefore, it
8 remained in the Sheriff's office.

9 Q Did you say Jeff wrote on the tape?

10 A I did not.

11 Q And are you aware of anyone that wrote on the tape?

12 A I don't know. I don't recall.

13 Q Was it your understanding -- and I understand it involves
14 assumptions and speculation -- that that tape was taken and
15 logged into evidence as any other piece of evidence would
16 have been at the Clark County Sheriff's office?

17 MR. BOGDANOVICH: Object to the form of the
18 question. I think it lacks foundation.

19 A I don't know.

20 Q (By Mr. Johnson) Do you have any understanding of how
21 evidence was logged in to the Clark County Sheriff's office
22 in 1984?

23 A Vaguely. I was not involved in investigations, but I saw
24 the product of investigations.

25 Q What's your vague understanding of how evidence was logged

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1 in? Because you understand what a chain of custody is,
2 right?

3 A Yes, I do. Officers would write a report. Sometimes there
4 would be a specific property report that would list items
5 one, two, three, four, five and identify what they are, and
6 they would go in evidence.

7 Q Did you ever see that type of report reflecting what
8 happened to the December 11, 1984, video interview that you
9 did with Katie Spencer?

10 A No.

11 Q Did you -- did you tell Art Curtis that you were going to
12 meet with Katie prior to when you met with Katie?

13 A I don't recall.

14 Q Let me -- why would you leave the Sheriff's Department and
15 the tape there if you made that tape to evaluate Katie's
16 competency?

17 A You're asking me to speculate and remember something from
18 28 years ago. I don't recall.

19 Q No. I'm asking you in this -- you'd agree this was a very,
20 very serious procedure that you performed with Katie
21 Spencer, correct?

22 A It was an important procedure.

23 Q Okay. And I'm asking you why you would videotape that
24 interview and then depart the Sheriff's Department without
25 the tape after you had taken such steps to have videotaped

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1 your evaluation of Katie's competency? Why would you do
2 that?

3 A That would have been the original document or the original
4 recording, which we would never have kept in our office.

5 Q Why not?

6 A We didn't keep any evidence in our office.

7 Q Did you ask anybody about what would happen to the tape
8 after you left?

9 A I don't recall.

10 Q You may have; you may not have, is that correct?

11 A I just -- yes, I don't recall.

12 Q Did you have any concerns that this tape contained a
13 five-year-old child talking about -- to you about sexual
14 molestation of her vaginally, et cetera, and her father,
15 who had not been charged yet, did you have any concerns
16 that this could get into the wrong hands because you left
17 without giving any directions whatsoever to anyone about
18 what to do with it?

19 A No, because it was left it with Sharon Krause, Sharon
20 Krause's office.

21 Q Sharon Krause was not present at the end of the interview,
22 correct?

23 A I believe she was there. I mean, I don't have immediate --

24 Q Was she --

25 A I don't have any independent recollection of anything other

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1 than what's on the video, but she was there at the
2 beginning at her office and it was during work hours. So I
3 have to infer that she was there. I remember her saying,
4 as she left, on the tape that "I'll just be outside at my
5 office."

6 Q Okay. So you don't have any recollection one way or the
7 other as to whether you had any interaction with her after
8 the taping stopped, correct?

9 A I don't recall, that's right.

10 Q So she may have been there and she may not have been there?

11 A I'm confident she was there.

12 Q And tell me why.

13 A Because she was there from the beginning -- at the
14 beginning. She said she'd be in her office. We moved into
15 her office, finished the interview, and I'm confident that
16 she was there. She would not have left with her victim
17 whose case she was responsible for. In the closed area of
18 the Sheriff's office you couldn't -- it was a locked area.
19 You couldn't get in there without a Sheriff's deputy. She
20 would not have left.

21 Q She wouldn't. So you know, as you sit here today, you're
22 sure that she didn't have a doctor's appointment, she
23 didn't get ill, she didn't go to lunch, she didn't depart?
24 You're absolutely sure she was there even though you don't
25 remember seeing her; is that correct?

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1 A Oh, I'm sure not.

2 Q Did you tell Ray's lawyer, James Rulli?

3 MS. FETTERLY: In December of -- you mean before
4 the interview? Is that the time period you're talking
5 about?

6 MR. JOHNSON: Well taken.

7 Q (By Mr. Johnson) Did you tell Ray's lawyer, if he had one,
8 prior to December 11 of 1984 that you were going to meet
9 with Katie?

10 A Well, I don't remember, but I would say probably not.

11 Q All right. And whether or not he was Ray's lawyer at the
12 time, did you tell James Rulli that you were going to meet
13 with Katie?

14 A That was the question I thought I just answered. I don't
15 recall, but probably not.

16 Q All right. When you began interviewing Katie on
17 December 11 of 1984, it was your desire that she would
18 implicate her father; is that correct?

19 A I believed that she already had implicated her father at
20 least three times to three different people, and my job
21 there was to test to see if she might be competent and be
22 able to recount the abuse to a male, to me, because I would
23 be the person who most likely would have been assigned. It
24 turned out that there was a female assigned afterwards.
25 But at that point in time that was my purpose.

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1 Q It was your desire to have her implicate her father on
2 videotape; is that correct?

3 A I had no desire. You're implying something that -- you're
4 trying to twist things. My desire was to see if she was
5 competent and could relay what she had previously relayed
6 to the investigators.

7 Q One of your goals was to get Katie to implicate her father
8 on videotape, correct?

9 A My goal was to determine whether she was competent to
10 testify about what had happened with her father, so -- it's
11 two ways of saying the same thing. She had previously --

12 Q One of your goals --

13 A She had previously implicated her father.

14 Q And I'm not asking you what she previously implicated. I'm
15 asking you: Was one of your goals to have Katie implicate
16 her father on videotape on December 11 of 1984, or was it
17 not?

18 A My goal was to see if she could relay -- yes. Yes.

19 Q Because I'm not asking you what -- I'm asking you whether
20 these are your goals, not what any other goals you had
21 were.

22 A My goal was to see if she was competent to testify.

23 Q Yeah, you keep saying -- the record is very clear on that's
24 your testimony, but I'm asking you about other goals, if
25 there were any. If there weren't, you can certainly say,

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1 maybe it wasn't.

2 A That would have been an investigatory task that had already
3 been accomplished by the investigators.

4 Q That isn't my question for you to characterize what I'm
5 asking.

6 A That's my answer.

7 Q Was that one of your -- was one of your goals on that day
8 to clear Ray of any wrongdoing?

9 A That wasn't my goal.

10 Q All right. Was the plan for that interview for DeAnne to
11 be present?

12 A No.

13 Q Why was she?

14 A Because Katie insisted on it. I had a choice of --

15 Q Where did Katie insist on it?

16 A Before we came in.

17 Q Does Katie insist on it on the tape?

18 A No, it was before we went to the room and started the
19 interview.

20 Q I thought you just told me you don't recall anything that
21 happened before the interview.

22 MS. FETTERLY: You were talking about
23 December 10th. He's talking about December 11.

24 MR. JOHNSON: No, I was talking about
25 December 11 too. We covered that too, if you look at your

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1 notes.

2 A Okay. Well, I do remember -- you know, you prompt someone
3 and it causes you to remember things, but the reason why
4 DeAnne was there, was because Katie didn't want to go in
5 the room without her mom, and I was given -- I had a choice
6 of either having this child who had allegedly been molested
7 by a man go in a room with the door closed with two men
8 against her will or have her mother there, and she wanted
9 her mother there.

10 Q So you recall that now?

11 A Yes. You didn't ask me that before.

12 Q Okay. Oh, I didn't ask you whether or not you recalled
13 anything else on December 11, 1984?

14 A There's a difference -- you know as well as I do, Counsel,
15 that there's a difference between asking somebody an
16 open-ended question -- it's like interviewing children as
17 well and getting a "Well, I don't remember" and then asking
18 a directed question, as you just did, which prompted my
19 memory.

20 Q Okay. So maybe I'll ring some other bells. Was the plan
21 for Sharon Krause to be present?

22 A No.

23 Q Okay. Why is she there at the beginning of the tape?

24 A I can -- you're going to not like me saying this because it
25 relates to other cases, but our practice -- we've done a

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1 lot of cases together before. And in the generic
2 run-of-the mill case, I didn't talk to the kids until
3 shortly within a few weeks of trial when we knew it was
4 going to go to trial. This case was different for a lot of
5 reasons.

6 But the practice that we had was Sharon would be
7 there, introduce me, kind of build a little bit of rapport,
8 and then come up with an excuse to leave so I could
9 interview the child and see if she would talk without
10 Sharon being there, because Sharon provided a great deal of
11 comfort. I mean, she was a motherly or grandmotherly-type
12 figure, and I was, you know, I was a young man who played a
13 different role. So it was a -- it was a common practice
14 for her to come up with a reason to leave, but it was
15 something preplanned.

16 Q So it was a common practice for you and Sharon Krause to at
17 least start these types of interviews together; is that
18 correct?

19 A Yes.

20 MS. FETTERLY: Object to form.

21 Q (By Mr. Johnson) How many times did --

22 A It depends on what you mean by "these kinds of interviews."
23 Interviews with children, yes. But this interview was the
24 first -- this competency interview was unusual.

25 Q (By Mr. Johnson) Oh, we found something we can agree on.

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1 Q Okay.

2 A And I said, "I don't recall."

3 Q Okay. And you can't tell from looking at the transcript
4 what -- if it caused you concern or not?

5 A 28 years ago?

6 Q Right.

7 A The whole interview caused me concern.

8 Q Okay.

9 A Whether that one word did --

10 Q Why did it cause --

11 A Because it --

12 Q Why did the whole --

13 A She was a very difficult witness to interview. And
14 while -- while she abided by her allegations and while she
15 was competent, I relayed all of that to Curtis. But she
16 was difficult. She was difficult. Five-year-olds are
17 difficult.

18 Q Where in your transcript can you point to for us where she
19 abided by her allegations?

20 A Can we just pause for a minute while I. . . ?

21 Q Yeah, take your time. Why don't you show us the first time
22 in your transcript she abides by what you say are her
23 allegations.

24 MR. FREIMUND: Do you mind if we take a short
25 break while he's reviewing that?

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1 let me answer, then I guess that's your choice.

2 Q Okay. So -- okay. Is it correct that you can't point to a
3 first point on this transcript where she abides by her
4 allegations?

5 A Well, it is a process because she first identifies who the
6 dolls are, and then she slowly, slowly, slowly makes a
7 disclosure up to the end where, on several occasions, she
8 makes very overt demonstrative disclosures, but it was a
9 process to get there.

10 Q And you've talked about how this is very difficult, and one
11 of the reasons it could be difficult is because what you're
12 trying to elicit from her are false statements; is that
13 fair enough?

14 A No. I was not trying to elicit --

15 Q Where, --

16 A Let me finish my answer, please. I was not trying to
17 elicit false statements.

18 Q I thought you did.

19 A You asked me if I was trying to elicit false statements,
20 and I was not.

21 Q Correct. Okay. Where did she first abide by -- you talked
22 about the process. Where is the first time or what are you
23 talking -- where are you pointing to?

24 A Again, if you won't let me explain the process, the answer
25 will be difficult, but she had identified --

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1 testifying to, but we're just going to talk about Katie's
2 words. Okay. Now, you said that you -- you talked about
3 why you videotaped this. Is it fair to say that you
4 videotaped this interview because you didn't feel you could
5 properly rely on Sharon Krause's reports to establish
6 Katie's competency?

7 A Absolutely not. She was a five-year --

8 Q Had Sharon --

9 A She was a five-year-old, and it was clear from the reports
10 that her competency was questionable.

11 Q Thank you.

12 After -- I'm going to come back to that, but I want
13 to ask you, did you determine after you evaluated Katie's
14 competency on December 11, 1994, [sic] that she was
15 competent to provide evidence against Ray?

16 A No, I determined that she might be competent. She probably
17 would be competent, not that she was competent. It was
18 questionable. I've always believed that this was a very
19 difficult and questionable case.

20 Q Did you determine that Katie Spencer was competent to
21 provide evidence against Ray such that he should be
22 arrested?

23 A I believed that she was competent to testify, that if you
24 look at the interview as a whole and not just pick out
25 little parts, that she was -- there was a good chance she

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1 was competent. We didn't have him arrested. He made the
2 initial appearance voluntarily.

3 Q You didn't cause Ray to be arrested after this interview,
4 did you?

5 A Me personally? I --

6 Q Yes.

7 A -- personally did not.

8 MS. FETTERLY: Object to the form of the
9 question.

10 Q (By Mr. Johnson) You had the power to take steps to cause
11 the arrest of Ray Spencer, didn't you, at that time?

12 A I could have, yes. I did not.

13 Q And you say that Katie might have been competent --

14 A It was an issue --

15 Q -- in your mind?

16 A It's always an issue with a five-year-old, Counsel, and it
17 certainly was an issue with her. That was a decision to be
18 made later by the judge.

19 Q After you concluded this interview wherein you say Katie
20 was likely competent --

21 A I said --

22 Q -- you left the Sheriff's office?

23 A Yes.

24 Q And you took no steps to restrict the freedom of Ray
25 Spencer in any way; is that correct?

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1 A That's true.

2 Q Although you believed that Ray Spencer had vaginally raped
3 his five-year-old daughter; is that correct?

4 A No.

5 Q That's not correct?

6 A That's not correct.

7 Q You did not believe that Ray Spencer had vaginally raped
8 his five-year-old daughter after this interview of
9 December 11, 1984 --

10 A No.

11 Q -- is that correct?

12 A That's correct.

13 Q What did you believe Ray Spencer had done to his
14 five-year-old daughter at the moment this interview
15 concluded on December 11 of 1984?

16 A I believe, as she showed me at least two times with the
17 dolls and partially described with words, that he had
18 performed fellatio on her, that is, he had put his penis up
19 to her mouth, up to or in her mouth, and I believed that he
20 had engaged in, at minimum, sexual contact with her, as she
21 showed me, and it's clear toward the end of the interview,
22 that he had contact with her, sexual contact with her while
23 she was naked -- while he was naked with them being
24 face-to-face and then with her lying on her face and him on
25 top. That -- that's what I concluded, was most likely what

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1 initial denial or couple of denials and just stop.

2 Q Yeah, there were more than a couple of denials in what you
3 did with Katie Spencer on December 11, of '84, correct?

4 A It depends on what you interpret the denials.

5 Q When she say "Nothing happened last summer," you interpret
6 that to mean "Something happened last summer"?

7 A I interpret it to be equivocal as to --

8 Q Okay, all right.

9 A -- what the subject she was referring to was.

10 Q Fair enough. Now, the lion's share, I think you were
11 suggesting, of the accusations that were abided by came
12 after your break in the transcript; is that correct?

13 A The lion's share, that would be correct, but not all of
14 them.

15 Q Okay. So let's talk about the break. That lasted what,
16 about 65 minutes?

17 A Yes.

18 Q And was that Katie's decision to take the break?

19 A Well, she was obviously tired out and she needed a break,
20 so it wasn't her decision; it was mine.

21 Q Yeah, you controlled when the break was taken, correct?

22 A Obviously, a belated decision. I should have made it long
23 before I did.

24 Q But you controlled it, right? You were calling all the
25 shots?

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1 Q Okay. Going back to the report of Shirley Spencer that
2 you're relying on as credible -- do you know what I'm
3 referring to?

4 A I don't know what you're referring to, and I'm not -- I'm
5 not attributing credibility to anybody's report. I'm just
6 saying it is what it is.

7 Q Okay.

8 A It would have been -- let me finish.

9 Q So Katie's outcry --

10 A Let me finish. Let me finish, please. I'm sorry. When
11 we're not in the same room, it's difficult.

12 If this case had gone to trial, it would have been
13 for the jury to decide who was credible and who wasn't.

14 Q All right. So you're not saying that you have any opinion
15 whatsoever about whether or not Katie's outcry, as you've
16 described it, to Shirley Spencer on or about August 24 of
17 1984 was credible; is that correct?

18 A When a child of tender years describes precocious sexual
19 behavioral and -- that they would have no way of knowing
20 about, it tells me that somebody abused that child.

21 Q All right. And she accused several other people of abusing
22 her, other than Ray Spencer, to Shirley Spencer, correct?

23 A Shirley said that she mentioned DeAnne and Karen, neither
24 of whom have penises.

25 Q Okay, let me ask it again. She accused other individuals

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1 A I'm sure I could find some more if I dug through them.

2 Q All right. Well, we won't make you do that right now.

3 With regard to mistakes, was it a mistake of yours
4 not to make sure the video was disclosed?

5 A You know, I'm glad you asked that question. The first
6 three and a half months from the time that case was charged
7 I was not involved as the prosecutor in the case. I did
8 two things to assist, but the case was assigned to someone
9 else, and I had no idea what discovery was provided and
10 what wasn't.

11 At the point that I came back into the case in the
12 second or third week of April of 1985, my attentions were
13 directed at the new allegations that had occurred when I
14 was not part of the case, a whole stack of reports from
15 March of 1985, and I was focusing on those trying to figure
16 out what had happened allegedly and what we needed to do
17 about it, getting a superseding information prepared,
18 edited, approved, and filed. And at that point we started
19 to think about preparing for trial and --

20 Q At what point was that that you started to think about
21 preparing for trial? What was the date on that?

22 A Well, Mr. -- Mr. --

23 Q And I'm just asking for the date. Again, if you want to
24 just answer the question instead of going off on a speech,
25 that's your choice.

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1 A I don't know exactly, but it would have been about the
2 first part of May.

3 Q All right. And I don't -- I got lost a little bit. I got
4 confused. So, is your answer that it was a mistake not to
5 make sure the video was disclosed or not a mistake?

6 A No. What I'm saying is that if we had proceeded with trial
7 preparation and Sharon and I had sat down and, as we did in
8 other cases, figured out what the reports were, what we
9 had, what we might not have had, what had been disclosed,
10 what might not have been disclosed, we would have figured
11 that out, and it would have been disclosed.

12 Q So as we sit here today, I'm just asking you with regard to
13 you, your role, was it a mistake for you, Mr. Peters, to
14 fail to make sure the videotaped interview of Katie Spencer
15 by you on December 11, 1984, was disclosed?

16 A If it had gone to trial and it hadn't been disclosed, that
17 would have been a mistake. This case ended up --

18 Q Okay. What about --

19 A No, no, no. Let me finish.

20 MS. FETTERLY: Let him finish.

21 A Let me finish my answer. This case ended up as a plea
22 bargain. That video interview contained impeachment
23 material that was relevant for impeachment if the witness
24 testified if the case went to trial. It did not go to
25 trial. Therefore, it was not a mistake, in my opinion.

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1 Q (By Mr. Johnson) You agree that the disclosure of that
2 tape to Ray Spencer would have affected his guilty plea?

3 MS. FETTERLY: Objection.

4 A No, I don't agree.

5 Q (By Mr. Johnson) Oh. You know one way or the other?

6 A You asked if I agreed. That was calling for my opinion.

7 Q Okay. Sure. Give me your opinion. You have an opinion
8 one way or the other? Are you going to jump into Ray's
9 mind and say what he would have done with that video?

10 A Counsel, you asked me. I gave you my answer.

11 Q No, I'm asking you a different question now.

12 MS. FETTERLY: Why don't you clarify? Are you
13 asking for this witness's opinion on that question or him
14 to speculate about something Mr. Spencer thought?

15 Q (By Mr. Johnson) Mr. Peters, you had an ethical, legal
16 obligation to disclose that video to Ray Spencer prior to
17 the time he entered his plea. Is that a correct statement?

18 A I don't think so.

19 Q All right.

20 A The supreme --

21 Q Mr. Peters, you understand in this case that Judge Settle
22 has found that there were inconsistencies in the sworn
23 testimony you have given regarding the interview of Kathryn
24 Spencer?

25 A I'm not sure what you're referring to.